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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,631	12/05/2003	Doug C. Eveland	16491-009002	9078
20985	7590	05/11/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			MULLEN, THOMAS J	
			ART UNIT	PAPER NUMBER
			2632	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/728,631

Applicant(s)

EVELAND ET AL.

Examiner

Thomas J. Mullen, Jr.

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-10 and 12-21 is/are allowed.
- 6) ☒ Claim(s) 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/20/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The amendment filed 1/24/05 has been fully considered. The change of the application status (under 35 U.S.C. 120) to "continuation-in-part" (of parent application 09/841,154) is acknowledged. The subject matter added to the specification and drawings (new Fig. 3 and new paragraphs 19.1 and 35.1-35.7), which was taken from US 5959529 that had been incorporated by reference in the original disclosure of this application, is acceptable.

2. The drawings are objected to because in new Fig. 3, it appears that reference numeral 64 should be 164 (note paragraph 0035.7, line 12).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Echerer (US 6046761, of record).

Echerer discloses a medical monitoring system and computer-based method for enabling "remote, interactive providing of medical services" (col. 3, lines 3-4), note remote monitoring device 20, central unit 100 and communications link 150 (Fig. 1); the remote monitoring device comprises various elements (46,48,50) for "monitoring one or more physiological aspects of a patient". As described at col. 4, lines 4-35, each of remote device 20 and central unit 100 includes a CPU (22 and 102 respectively); a video camera (24 and 104 respectively); a pair of video terminals (26,28 and 106,108 respectively); microphones (30 and 110 respectively); and

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speakers (32 and 112 respectively). As described at col. 5, line 64 to col. 6, line 31 with respect to Fig. 2, a patient at the remote device 20 "seeks access" to a monitoring service by "requesting services of the medical practitioner"; the central unit 100 determines whether the patient/remote device is authorized to access the monitoring service by requiring the patient at the remote device to insert an "identification card" and then select a payment option in the form of a "credit card, insurance program or...a prepaid account number". In other words, the central unit determines whether the remote device is authorized "at least in part on authorization data received from a third-party source", the third party source being a credit card company, insurance company, etc. for ensuring that the patient (or insurance company) is able to pay for the service. (It is inherent or clearly implied in a system of the type disclosed by Echerer that the third-party source will provide such "authorization data" before any such "credit card, insurance program or...a prepaid account number" is accepted.) The patient is also required to "validate" a part of the process by providing an "electronic signature" at device 62. If the patient is authorized, the central unit "selectively issu(es) an activation signal" whereby the "video and auditory connections between station 20 and 100 are initiated".

Further regarding claim 23, Echerer teaches providing a large number of remote monitoring devices 20 in public areas (col. 2, lines 46-52), any of which may communicate with the central unit 100; and, CPU 102 associated with the central unit is inherently a "programmable processor" which "host(s) a medical monitoring service" implemented at least in part by "one or more software processes", as discussed in the above-noted portions of Echerer.

5. Claims 1, 3-10 and 12-21 are allowed.

6. Applicant's arguments filed 1/24/05 regarding (i) the incorporation by reference of subject matter from US 5959529 and (ii) the teaching of a "programmable processor" in parent application 09/841,154 have been fully considered. As to (i), it appears that 37 CFR 1.57 (including parts (b), (f) and (g)) has been abolished, based on the listing of "Patent Rules" (37 CFR) in the May 2004 revision of the MPEP. As to (ii), the rejection of all claims under 112(1) that was set forth in the last Office action (i.e., first item in para. 4) was based on the originally-presented status of this application as a "continuation" of the parent application, which

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necessitated holding the various "new" portions of the present disclosure (some of which were identified in para. 2 of the last Office action) as "new matter"; at the time, this issue was considered applicable to all of the originally-filed claims of the present application to one degree or another (e.g., the recitation in claim 6 of "updating the local third-party authorization database" appears to be taught only in the "new" portions of the present application).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

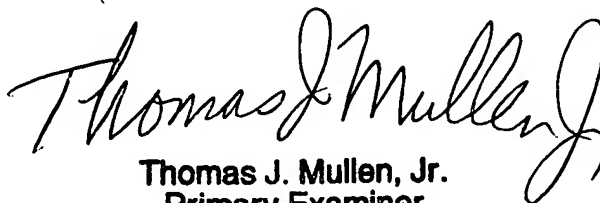
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM

  
Thomas J. Mullen, Jr.  
Primary Examiner  
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